

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4582 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

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PARICHAND SUGANCHAND GHOSHAL

Versus

ARVINDKUMAR TARACHAND GANDHI

Appearance:

1. Special Civil Application No. 4582 of 2002
MR RA SEJPAL for Petitioner No. 1
MR BHARGAV N BHATT for Respondent No. 1-3
Mr.Dabhi, AGP for Respondent No. 4-5
Mr.Merchant for MS MADHUMATI T YADAV for Respondent No. 6
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CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 06/08/2002

ORAL JUDGEMENT

Rule. Mr.Bhargav Bhatt appears for respondent Nos

1 to 3, Mr.Dabhi, Ld.AGP appears for respondent Nos 4 & 5 and Mr.Merchant for Ms.Madhumati Yadav appears for respondent No.6 and waive service of rule respectively. With the consent of parties matter is taken up for final hearing.

2. The short question in this petition is that a complaint was filed by the petitioner to the Asst.Charity Commissioner for taking steps under section 38 of the Bombay Public Trust Act (hereinafter referred to as "the Act"). It appears that the Asst.Charity Commissioner instructed his subordinate staff to record the statements of persons on the basis of the complaint. Thereafter, he has passed the order dated 12.7.01 whereby he has stated that since there is no prima facie case it is not necessary to hold an inquiry under section 39 of the Act and, therefore, the papers are filed. It is that order which is under challenge in this petition.

3. The contention raised on behalf of the petitioners is that the opportunity of hearing has not been given by the Asst.Charity Commissioner before passing the impugned order. It has also been submitted on behalf of the petitioners that the order is a non-speaking order and it does not record reasons for not proceeding with the inquiry under section 39 of the Act.

4. On behalf of the respondent Nos 1 to 3 Mr.Bhatt has submitted that the petitioner is a beneficiary and supporter of respondent No.6. Since the respondent No.6 is ousted from the management the petitioner with a view to settle scores with respondent No.6 has filed the original complaint. Therefore, he submitted that on merits also there is no case for interference since the Asst.Charity Commissioner has rightly found that there is no prima facie case.

5. Considering the above, I am of the view that it is not necessary to examine several other questions raised by both sides, but one fact is clear that the order is passed by the Asst.Charity Commissioner without giving opportunity of hearing to the petitioner who was the original complainant. Further, the order is passed without recording reasons also and therefore it can be said that it is a nonspeaking order. In view of this, I am of the view that the order can not stand since there is breach of principles of natural justice and opportunity of hearing has not been given to the petitioner.

6. In view of the above, the order, dated 12.7.01 is quashed on the ground that the same is in breach of principles of natural justice. However, it is clarified that the Asst.Charity Commissioner shall give opportunity of hearing to the petitioner as well as to the respondent Nos 1 to 3 and shall pass reasoned order in accordance with law. Such exercise shall be completed within a period of three months from the date of receipt of the writ of this court. It is clarified that the contentions of both sides are kept open and the petitioner as well as respondent Nos 1,2 & 3 would be entitled to raise all contentions available under law before the Asst.Charity Commissioner.

7. Petition is allowed accordingly. Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

6.8.02 (JAYANT PATEL, J)